

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARVIN DEAN GOODSON	§	
	§	CIVIL ACTION NO. 6:04cv458
		(Consolidated with 6:04cv470)
MAXEY CERLIANO	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Marvin Goodson, proceeding *pro se*, filed these two lawsuits complaining of alleged violations of his constitutional rights. This Court consolidated the lawsuits and ordered that the consolidated matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On March 15, 2005, the Magistrate Judge issued a Report recommending that the consolidated lawsuit be dismissed. The Magistrate Judge noted that Goodson had been ordered to file an amended complaint setting out his claims with more factual specificity, but that Goodson had failed to do so, thus rendering his lawsuit amenable to dismissal for failure to prosecute or to obey an order of the Court pursuant to Rule 41(b), Fed. R. Civ. P.

However, the Magistrate Judge went on to state that Goodson's lawsuit suffered from more fundamental flaws, including the facts that it rested upon a claim of *respondeat superior* liability, which is inapplicable in Section 1983 actions except under certain conditions not present in this case, and that the underlying claim was one of negligence, also does not set out a claim of constitutional dimensions under Section 1983. Thus, the Magistrate Judge concluded that Goodson's lawsuit was frivolous.

A copy of this Report was sent to Goodson at his last known address, return receipt requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge and has determined that this Report is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED with prejudice as frivolous and, alternatively, for failure to prosecute or to obey an order of the Court. It is further

ORDERED that any and all motions which may be pending in this cause are hereby DENIED.

SIGNED this 27th day of April, 2005.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE